

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 9, 2008 Session

ELIZABETH CALCUTT COWAN v. PETER CALCUTT

**Appeal from the Chancery Court for Williamson County
No. 33394 Jeffrey Bivens, Chancellor**

No. M2008-00490-COA-R3-CV - Filed December 8, 2008

Attorney appeals trial court's judgment holding her in civil contempt. No transcript of the contempt hearing was available for appellate review, and the appellant filed a statement of the evidence. However, because the appellee's objection to this statement of the evidence was not ruled upon by the trial court in accordance with Tenn. R. App. P. 24(e), the judgment is vacated, and the cause is remanded for new trial.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Vacated;
Cause Remanded**

SHARON G. LEE, SP. J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

Connie Reguli, Brentwood, Tennessee, pro se appellant.

Donna L. Green and Demeka K. Church, Brentwood, Tennessee, for the appellee, Elizabeth Calcutt Cowan.

MEMORANDUM OPINION¹

The petitioner in a post-divorce proceeding terminated the services of her attorney,

¹Tenn. R. App. P. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

Connie Reguli, retained in her stead attorney Donna L. Green, and thereafter, filed a motion for an order of substitution of counsel. This motion was granted by order of the trial court, which directed that “Ms. Reguli shall turn over the party’s file to Attorney Donna Green by close of business December 6, 2007.” On January 2, 2008, the Petitioner filed a motion requesting that Ms. Reguli be found in civil contempt for failing to turn over her file as directed. After a non-jury hearing, the trial court entered an order finding Ms. Reguli in civil contempt and awarded Ms. Green a judgment against her for attorney’s fees in the amount of \$500. Ms. Reguli appeals.

Ms. Reguli raises two issues for our review – whether there was sufficient evidence to support the trial court’s finding of contempt and whether the trial court erred in its award of attorney’s fees.

We begin by noting that no transcript of the hearing on the motion for contempt was included in the record on appeal. As set forth in pertinent part below, section (c) of Rule 24 of the Tennessee Rules of Appellate Procedure provides that when no transcript of the evidence is available, the appellant is required to file a statement of the evidence, and section (e) of Rule 24 further provides that any objections the appellee may have to such statement shall be resolved by the trial court:

(c) Statement of the Evidence When No Report, Recital, or Transcript Is Available. If no stenographic report, substantially verbatim recital or transcript of the evidence or proceeding is available, the appellant shall prepare a statement of the evidence or proceedings from the best available means, including the appellant’s recollection. The statement should convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal. . . . Upon filing the statement, the appellant shall simultaneously serve notice of the filing on the appellee, accompanied by a short and plain declaration of the issues the appellant intends to present on appeal. . . . If the appellee has objections to the statement as filed, the appellee shall file objections thereto with the clerk of the trial court within fifteen days after service of the declaration and notice of the filing of the statement. Any differences regarding the statement shall be settled as set forth in subdivision (e) of this rule.

. . .

(e) Correction or Modification of the Record. . . . *Any differences regarding whether the record accurately discloses what occurred in the trial court shall be submitted to and settled by the trial court regardless of whether the record has been transmitted to the appellate court. Absent extraordinary circumstances, the determination of the trial court is conclusive.*

Tenn. R. App. P. 24 (emphasis added).

While it appears that Ms. Reguli did file a statement of the evidence in compliance with the rule, it also appears that Ms. Green filed an objection to such statement and that this objection was never ruled upon by the trial court as further required by the rule. It was the responsibility of appellate counsel to have this objection addressed and resolved prior to review by this Court, and this was not done. Pending the trial court's resolution of all disputes as to the statement of evidence, our review of the issues raised would be premature. In the interest of justice, we find it appropriate that the trial court's judgment be vacated and that this matter be remanded. Given the length of time since the original hearing, it is reasonable to assume that the trial court may not recall sufficient detail to confirm what evidence was presented at that hearing. Accordingly, upon remand, the trial court is instructed to conduct a new hearing upon the motion for contempt. Costs of appeal are assessed to the parties equally, for which execution may issue if necessary.

SHARON G. LEE, SPECIAL JUDGE